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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 62

PAUL SEYMOUR,

Petitioner,

vs.

SUPERINTENDENT OF WASHINGTON STATE PENITENTIARY.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF WASHINGTON**

BRIEF FOR THE PETITIONER

GLEN A. WILKINSON,
1616 H St., N.W.,
Washington, D. C.,
Counsel for Petitioner.

CLARON C. SPENCER,
1616 H St., N.W.,
Washington, D. C.,
Of Counsel.



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BRIEF FOR THE PETITIONER

Opinions Below

The Superior Court of the State of Washington in and for the County of Okanogan did not write an opinion. The Superior Court's findings of fact, on reference from the Washington Supreme Court, are found at R. 14-21. The opinion of the Supreme Court of the State of Washington (R. 23-26) is reported at 55 W.2d 109, 346 P.2d 669.

Jurisdiction

The Supreme Court of the State of Washington did not enter a judgment other than its opinion of November 19, 1959 (R. 23-26). The petition for a writ of certiorari was

filed on December 28, 1959, and was granted on March 6, 1961 (R. 27). The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

A question of substitution which it was feared might inhere in the case seems no longer a matter for concern. The original petitions for writs of habeas corpus and certiorari herein were directed against Merle E. Schneckloth, former superintendent of Washington State Penitentiary. Schneckloth resigned and his successor was appointed as superintendent on March 1, 1957, while this case was before the Supreme Court of the state. That court did not, apparently, regard substitution as necessary under its process nor its lack as abating the case, for it proceeded to dispose of the matter on the merits. Present counsel first learned of Schneckloth's resignation about June 9, 1961, and promptly filed with this Court a memorandum questioning whether the cause had abated. The Court appears to have put the matter beyond controversy in its June 20, 1961, amendment of Rule 48 to provide, in substance, that when a public officer is a party to a proceeding in his official capacity and resigns during its pendency, future proceedings shall be in the name of the substituted party who "may be described as a party by his official title rather than by name." Accordingly, petitioner has chosen to list respondent by his title rather than by name in this brief.

Statutes and Other Authorities Involved

The relevant portions of §§ 1151(a), 1153 and 3242 of Title 18 of the United States Code; the Executive Order of July 2, 1872; the Acts of July 1, 1892, April 28, 1904, March 22, 1906; the Presidential proclamation of May 3, 1916; and the Acts of August 31, 1916, and July 24, 1956, are set forth in Appendix A, *infra*, pp. 31-39.

Question Presented

Whether the land upon which the purported crime was committed was, at the time of the offense, within "Indian country" as defined in 18 U.S.C. § 1151(a) even though the land had been patented in fee.

Statement

Petitioner is an enrolled member of the Colville Indian Tribe in the State of Washington (R. 7, 10, 16). He was charged in the Superior Court in and for the County of Okanogan with the crime of burglary in the second degree, the offense allegedly having been committed at the Omak Market in East Omak, Town of Omak, on August 25, 1956 (R. 14). When petitioner was arraigned he pleaded not guilty, but thereafter withdrew his plea and pleaded guilty to the lesser and included offense of attempted burglary in the second degree (R. 14). He was found guilty and was sentenced for a period of not more than seven and one-half years (R. 14-15).

Following his imprisonment, petitioner filed in the Supreme Court of the State of Washington a petition for a writ of habeas corpus alleging, *inter alia*, that the judgment and sentence of the Superior Court and his incarceration in the state penitentiary were illegal and void because he was an Indian ward of the United States, an unemancipated member of the Colville Indian Tribe, and the purported crime occurred in Indian country, citing 18 U.S.C. §§ 1151, 1152 and 1153 (R. 1-3). The return and answer to the petition for a writ of habeas corpus (R. 3-4) raised questions of fact which the Washington Supreme Court referred to the Superior Court to take evidence and make findings as follows (R. 5):

(1) At the time of the commission of the offense charged in the information, was the petitioner an enrolled member of any Indian tribe;

(2) Where was the alleged offense committed; specifically, was that place "Indian Country" as defined by Title 18, U.S.C., § 1151.

A hearing was held before the Superior Court. Petitioner was present and was represented by counsel (R. 6). The testimony developed that petitioner was an enrolled member of the Colville Tribe and the Superior Court so found (R. 7, 10-11, 16).

The testimony also developed that the market, where the offense occurred, was situated in East Omak, that portion of the Town of Omak lying east of the Okanogan River (R. 8, 11, 13). The land on which the market was located was being purchased by one Rusk from one Robbins who held a patent in fee to the land (R. 13).¹

The offense was committed within the diminished Colville Reservation (south half) as it existed after the north half of the reservation was restored to the public domain and opened up for settlement under the homestead laws in 1892 (R. 18). See diagram, Appendix B, *infra*, p. 40. The south half was opened to entry by the Act of 1906 and the proclamation of 1916. Appendix A, *infra*, pp. 34, 37.

¹ The Okanogan River formed the west boundary of the Colville Reservation when established by Executive Order of July 2, 1872. 1 Kappler, *Indian Affairs, Laws and Treaties*, p. 916, Appendix A, *infra*, p. 32. See Royce, *Indian Land Cessions in the United States*, Washington Map 1, No. 536. By the Act of July 1, 1892, 27 Stat. 62, Appendix A, *infra*, p. 32, what approximated the north half of the Colville Reservation was "vacated and restored to the public domain" and the portion of the reservation remaining was thereafter referred to as the south half, or diminished Colville Reservation. See Royce, *op. cit.*, Washington Map 2, No. 718.

Undisposed of lands in the south half were restored to tribal ownership by the Act of 1936. Appendix A, *infra*, p. 38.

On the basis of the foregoing facts, the Superior Court concluded that the place where the crime was committed was not in the Indian country because, pursuant to the Act of March 22, 1906 (34 Stat. 80), and the Presidential proclamation of May 3, 1916, Appendix A, *infra*, pp. 34, 37, the diminished Colville Reservation had ceased to be "land within the limits of an Indian reservation under the exclusive jurisdiction of the United States Government" (R. 21).

In so doing, the Superior Court followed *State, ex rel. Best v. Superior Court*, 107 Wash. 238, 241, 181 Pac. 688, 689.² The Supreme Court of the State of Washington upheld the findings of the Superior Court and denied the petition for a writ of habeas corpus (R. 23-26).

Summary of Argument

The Colville Indian Reservation has been "Indian country" and an Indian reservation under the jurisdiction of the United States since its creation in 1872. The north part (not here involved) was separated by the Act of 1892, but the south, or "diminished" portion, remains "Indian coun-

² The *Best* case arose after the opening of the lands of the diminished reservation and involved a member of the Colville Tribe charged with two counts of grand larceny. The Indian sought a writ of prohibition from the Supreme Court of Washington to prevent the Superior Court for Okanogan County from trying him for the offenses. The Indian's defense was that the crimes committed, if any, were committed within the limits of the diminished Colville Reservation and thus were under federal jurisdiction. The Washington Supreme Court sustained state jurisdiction, saying that, since the 1906 Act, the diminished Colville Reservation "is no longer an Indian reservation."

try" within 18 U.S.C. §1151(a). The Act of 1906, which opened surplus lands of the reservation to settlement or other disposition (after issuance of patents in trust to Indians), did not dissolve the reservation or reduce it further in size. This is obvious from the provisions of the Act of March 22, 1906. That Act provided that the United States, acting as trustee for the Indians, would undertake to sell the unallotted and unreserved lands of the reservation and apply the proceeds of sale to the benefit of the Indians. The terms of the Act of 1906 clearly distinguish it from provisions in statutes, treaties or agreements (such as the Act of 1892) which have effected cessions of all or parts of the lands of Indian reservations. The Act of 1892 is an example of a "cession and removal" law. It removes the land, when patented in fee, from the Indian reservation and "Indian country." The Act of 1906 is an example of a "relinquishment in trust" law. It does not remove the land from the Indian reservation or from the "Indian country."

The Supreme Court of the State of Washington sustained state jurisdiction on the basis of its prior holding in *State, ex rel. Best v. Superior Court*, *supra*, p. 5, holding that, as a result of the Act of March 22, 1906, and the Presidential proclamation of May 3, 1916, which implemented it, the "diminished" Colville Indian Reservation had ceased to be "land within the limits of an Indian reservation under the exclusive jurisdiction of the United States Government." In so doing, the Supreme Court of the State of Washington failed to recognize the distinction between the Acts of 1892 and 1906, failed to recognize and give proper weight to legislative and executive recognition of the continued existence of the Colville Reservation, and failed to properly apply 18 U.S.C. § 1151(a), which provides that "all land within the limits of any Indian reservation under the jurisdiction of the United States Govern-

ment, notwithstanding the issuance of any patent . . . " constitutes "Indian country," jurisdiction over which is retained by the United States.

It is clear from many enactments by the Congress and pertinent decisions and opinions of the Department of the Interior that the boundaries of the Colville Indian Reservation have remained constant, except for the deletion of the northern half by the Act of 1892. Even the lands which remained undisposed of following the Act of 1906 were restored to tribal ownership by the Act of July 24, 1956.

Since the Act of 1885, federal jurisdiction has extended to specified offenses committed by Indians anywhere within the limits of Indian reservations. Federal jurisdiction is exclusive and Congress alone may determine when the states may assume jurisdiction. Congress granted contingent permission to states by the Act of 1953, but the State of Washington has not accepted jurisdiction over the Colville Indian Reservation. Accordingly, that State did not have jurisdiction to try petitioner.

The Act of 1906 is similar to the Act of December 21, 1904, 33 Stat. 595, which opened the surplus lands of the Yakima Indian Reservation within the State of Washington for disposition or sale under the public land laws. The Supreme Court of the State of Washington has consistently denied state jurisdiction with respect to major offenses committed by Indians within the Yakima Indian Reservation. It should be required to do so with respect to the Colville Indian Reservation.

ARGUMENT

All Land Within the Limits of the Colville Indian Reservation Is Indian Country.

The Colville Indian Reservation was established by an Executive Order issued by President Grant on July 2, 1872. Its boundaries were fixed as the Columbia River on the east and south, the Okanogan River on the west and the British possessions on the north. 1 Kappler, *Indian Affairs, Laws and Treaties*, p. 916, Appendix A, *infra*, p. 32. It was legally constituted and within the Indian country at that time. *United States v. Pelican*, 232 U.S. 442, 445, 449.

By the Act of July 1, 1892, 27 Stat. 62, Appendix A, *infra*, p. 32, approximately one-half of the reservation—the northern half—was ceded by the Indians and “vacated and restored to the public domain.”³ The northern half of the reservation was to be open to settlement and entry following proclamation of the President, except for 80-acre allotments to the Indians residing on that portion of the reservation. The north half is not involved in the present case.

The Act of 1892 left undisturbed the Columbia and the Okanogan Rivers as the east, south and west boundaries of the diminished (south half) reservation.⁴ In 1904 Congress authorized construction of a smelter on lands within the diminished Colville Reservation subject to the provision that “The laws regulating intercourse with Indians shall be applicable to the lands set aside under this act so long as the south half of the Colville Reservation remains as an Indian reservation.” Act of April 28, 1904, 33 Stat. 567, Appendix A, *infra*, p. 34.

³ See *Indian Land Cessions in the United States*, Washington Map 2, No. 717.

⁴ East Omak is within the diminished reservation (R. 18).

A. THE ACT OF MARCH 22, 1906, AND THE PRESIDENTIAL PROCLAMATION OF MAY 3, 1916, DID NOT DISSOLVE THE COLVILLE RESERVATION OR CHANGE ITS BOUNDARIES

The Supreme Court of the State of Washington held that petitioner was subject to the jurisdiction of the state courts because "The diminished Colville Indian Reservation is no longer an Indian reservation" citing its prior opinion in *State, ex rel. Best v. Superior Court*, 107 Wash. 238, 241, 181 Pac. 688, 689 (1919).

The result reached by the Supreme Court of the State of Washington was based upon the premise that the Act of March 22, 1906, and the proclamation of May 3, 1916, had, like the Act of 1892, "again diminished the Colville Reservation reducing it in size from that specified by the Act of 1892" (R. 25-26).

The result achieved by the Supreme Court of the State of Washington is clearly erroneous. It committed error because it followed its previous erroneous determination in *State, ex rel. Best v. Superior Court*, 107 Wash. 238, 241, 181 Pac. 688, 689, and by concluding that the purposes and results of the Acts of 1892 and 1906 were similar. An explanation of the differences in those Acts exposes the error.

By the express terms of the Act of 1892, Appendix A, *infra*, p. 32, the north half of the Colville Reservation as established in 1872 was "vacated and restored to the public domain" excepting only allotments made to Indians resident in that area. The proceeds derived from the disposition of the north half were to be placed in the Treasury of the United States for such public use as Congress should determine. § 2, 27 Stat. 63. Under § 6 of the Act of 1906, however, proceeds of land dispositions were to be deposited in the Treasury of the United States to the credit of the Indians of the Colville Reservation and expended for their use. Appendix A, *infra*, p. 35. Unlike the Act of 1892,

the Act of 1906 did not purchase the Indian land; it provided only (§ 9) that the United States was to act as trustee until the land was sold. Appendix A, *infra*, p. 36.

The 1892 statute is an example of the Indian treaties, agreements and statutes which fall in the "cession and removal" pattern whereby the United States obtained absolute and out-right cessions of Indian lands, the Indians usually receiving cash, annuities, or other lands. The 1906 Act is an example of the "relinquishment in trust" approach—the lands not allotted or reserved for specified purposes remained in tribal ownership under the supervision of the United States as trustee until sold or otherwise disposed of. Cohen, *Handbook of Federal Indian Law* (1942), p. 334; Instructions of the Department of the Interior, *Restoration of Lands Formerly Indian to Tribal Ownership*, 54 I.D. 559, 560.

Action under the "cession and removal" pattern removed Indian land from the jurisdiction of the United States to the state. A transaction under the "relinquishment in trust" pattern operated to continue the land in question under the jurisdiction of the United States. In *Ash Sheep Co. v. United States*, 252 U.S. 159, 166, which involved provisions of an act relating to the Crow Indian Reservation substantially similar to the provisions of the Act of 1906 involved here, this Court said:

Taking all of the provisions of the agreement together we cannot doubt that while the Indians by the agreement released their possessory right to the Government, the owner of the fee, so that, as their trustee, it could make perfect title to purchasers, nevertheless, until sales should be made any benefits which might be derived from the use of the lands would belong to the beneficiaries and not to the trustee, and that they did not become "Public lands" in the sense of being

subject to sale, or other disposition, under the general land laws. *Union-Pacific R.R. Co. v. Harris*, 215 U.S. 386, 388. They were subject to sale by the Government, to be sure, but in the manner and for the purposes provided for in the special agreement with the Indians, which was embodied in the Act of April 27, 1904, 33 Stat. 352, and as to this point the case is ruled by the *Hitchcock and Chippewa Cases*, *supra* [.] Thus, we conclude, that the lands described in the bill were "Indian lands" when the company pastured its sheep upon them,

The Solicitor of the Department of the Interior has expressly ruled that the surplus lands of the Colville Reservation did not, by the Act of 1906, become public lands of the United States. They were "Indian trust" lands. *Mining Locations on Colville Surplus Lands*, 60 I.D. 318, 320.

Even under the early definition of Indian country, *i.e.*, lands to which the Indian title had not been extinguished, the Colville Reservation remained Indian country after passage of the Act of 1906. Act of June 30, 1834, 4 Stat. 729; *Bates v. Clark*, 95 U.S. 204; *Ex parte Crow Dog*, 109 U.S. 556, 561-562.

In short, an Indian reservation, even though subjected to the "relinquishment in trust" pattern, remains Indian country and an Indian reservation under the exclusive jurisdiction of the United States until or unless it is subjected to the "cession and removal" pattern.³ As this Court stated in *United States v. Celestine*, 215 U.S. 278, 285, "when Congress has once established a reservation all tracts in-

³ The diminished Colville Reservation was "relinquished in trust"; only the north half (not here involved) was subjected to the "cession and removal" pattern.

cluded within it remain a part of the reservation until separated therefrom by Congress."

It is not necessary to speculate as to the status of the diminished Colville Reservation had all surplus lands been disposed of. Federal Indian policy changed in the decade beginning in 1930. The policy of allotment, which had been in vogue from 1887, and which looked to the gradual extinction of Indian culture, reservations and titles and substitution of white culture, was abandoned.⁶ In its place, the federal government inaugurated a new approach to the economic and social advancement of the Indian. The cornerstone of the new approach was the Indian Reorganization Act⁷ of June 18, 1934, 48 Stat. 984, which provided, *inter alia*, for the preservation of Indian lands and resources.⁸

Section 1 of the Indian Reorganization Act prohibited further allotments and § 3 authorized the Secretary of the Interior "to restore to tribal ownership the remaining surplus lands of any Indian reservation . . ." where the provisions of the Act were accepted by the tribal owner. Acting under this authorization, the Secretary of the Interior, on September 19, 1934, temporarily withdrew from disposal of any kind the surplus lands of the Colville and other Indian reservations in order to maintain the status quo until permanent restoration to tribal ownership could be effected. Instructions, *Restoration of Lands Formerly Indian to Tribal Ownership*, 54 I.D. 559, 562; opinion of the Solicitor, *Mining Locations in Colville Surplus Lands*, 60 I.D. 318, 320-321.

⁶ See Cohen, *Handbook of Federal Indian Law* (1942), ch. 11, pp. 206-217, for a review of the allotment system, its aims and its failures.

⁷ Sometimes referred to as the Wheeler-Howard Act.

⁸ S. Rept. No. 1080, 73d Cong., 2d Sess.; Cohen, *op. cit.*, pp. 84-86.

Although it seems clear from the above that the Act of 1906 and the proclamation of 1916 did not remove any of the Colville Reservation from federal jurisdiction, any remaining doubt was dispelled by the Act of July 24, 1956, 70 Stat. 626.* By § 1 of that Act, all undisposed of lands of the Colville Reservation dealt with by the Act of March 22, 1906, were "restored to tribal ownership to be held in trust by the United States to the same extent as all other tribal lands on the existing reservation, . . ." That Act, approved more than one month prior to petitioner's conviction (R. 44), removes any lingering doubt that the Colville Indian Reservation, as established by the Executive Order of 1872 and modified by the Act of 1892, continued to be Indian country under the jurisdiction of the United States.

Even without such a Congressional restoration, the diminished Colville Reservation remained Indian country—the definition of "Indian Country" in 18 U.S.C. § 1151(a), approved June 25, 1948, encompassed "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent." (Emphasis supplied.)

B. THE LEGISLATIVE AND EXECUTIVE HAVE REPEATEDLY RECOGNIZED THE EXISTENCE AND EXTENT OF THE COLVILLE RESERVATION

Any doubt as to the existence and extent of the Colville Reservation is dispelled by the repeated recognition of the reservation by Congress and the Department of the Interior

* A special act restoring the lands to tribal ownership was required because the Secretary of the Interior was precluded from restoring the lands when, on April 6, 1935, the Colville Indians voted to exclude themselves from the operation of the Indian Reorganization Act of 1934. *Mining Locations on Colville Surplus Lands*, 60 I.D. 318, 321.

since 1906. Congressional enactments have not been perfectly consistent, but the over-all pattern leaves no room for doubt.

1. *Statutes Recognizing Colville Reservation*:—The following Acts of Congress seem pertinent:

(a) The Act of May 18, 1916, 39 Stat. 123, 154-155, authorized a sale of certain land "in the diminished Colville Indian Reservation, in the State of Washington" to the state historical society and authorized an allotment "within the diminished Colville Indian Reservation" to an Indian.

(b) The Act of August 31, 1916, 39 Stat. 672, amended the Act of 1906 by adding a new § 13, as follows:

That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State or otherwise disposed of, shall be subject to the laws of the United States prohibiting the introduction of intoxicants into the Indian country until otherwise provided by Congress.

(c) The titles of two bills enacted to extend the time for payment of the purchase price for lands sold under the Act of 1906 referred to the "former Colville Indian Reservation, Washington." Acts of March 11, 1918, 40 Stat. 449, and March 19, 1920, 41 Stat. 535.

(d) On March 13, 1924, 43 Stat. 21, Congress authorized suits to be brought in the Court of Claims by certain Indian tribes residing at various places in the United States, including the Nez Perce residing "upon the Colville Indian Reservation, in the State of Washington"

(e) On June 29, 1940, 54 Stat. 703, Congress enacted legislation to acquire certain described lands from "within the Spokane and Colville Reservations" for construction of

the Grand Coulee Dam project and reserved to the "Indians of the Spokane and Colville Reservations" certain hunting and fishing rights in the reservoir to be created by the project.

(f) The appropriation acts for the Department of the Interior of June 28, 1941, 55 Stat. 303, 313; July 2, 1941, 56 Stat. 461, 515; June 28, 1944, 58 Stat. 463, 471, provided tribal funds for the acquisition of lands for the "Indians of the Colville Reservation, Washington."

(g) The Act of June 16, 1955, 69 Stat. 141, 143, appropriated funds for the purchase of lands "within the Colville Indian Reservation, Washington" for a reservoir in the Colville Indian irrigation project.

(h) On July 24, 1956, 70 Stat. 626, as noted, *supra*, p. 13, the "undisposed of lands of the Colville Indian Reservation, Washington, dealt with by the Act of March 22, 1906 (34 Stat. 80)," were restored to tribal ownership to be held "as all other tribals lands on the existing reservation" The Colville Reservation is mentioned repeatedly throughout the Act. The sale and exchange of Indian and private lands were authorized by § 2 for the purpose of consolidating Indian and non-Indian holdings in Ferry and Okanogan Counties but the acquisition of land by the Indians was "limited to lands within the boundary of the reservation."

The Act of July 24, 1956, 70 Stat. 626, expressly referred to the "existing" reservation. That Congress was fully aware of the existence and extent of the Colville Reservation is apparent from the House Report on H.R. 7190, which became the 1956 Act, H.Rept. No. 2080, 84th Cong., 2d Sess. The occasion for the opening of the reservation in 1906 is discussed in the report. It recalled, pp. 2-3, that an agreement, negotiated with "a disputed majority" of the Colville Indians in 1905, provided that the Indians "relin-

quished all their right, title and interest" to the lands of the diminished reservation. The Agreement of 1905 arose from discussions between the Indians and a government agent which also concerned payment for the vacated north half of the reservation. S.Rept. No. 1424, 59th Cong., 1st Sess., on S. 4229 which became the 1906 Act. The House Report on the bill which became the Act of 1956 continues, p. 23: "Some of the Colville Indians feel that their forefathers were badly informed by the Federal Government, probably through misunderstandings in the McLaughlin [government agent] case when they negotiated the 1905 agreement which stipulated that payment for the northern half of their reservation was contingent upon their signing away additional portions of their diminished land base." It was also explained that the Indians made no claim to the northern half of the reservation but wanted their rights in the diminished area clarified.

2. *The Executive Has Consistently Recognized the Existence and Extent of the Colville Reservation*:—The Department of the Interior, the Executive arm charged with administration of Indian Affairs, has repeatedly recognized the existence of the Colville Reservation. This is apparent from its recommendation, incorporated in the Indian Reorganization Act of 1934, that surplus lands be withdrawn from disposition under the public land laws. See *Restoration of Lands Formerly Indian to Tribal Ownership*, 54 I.D. 559, and the opinion, *Mining Locations on Colville Surplus Lands*, 60 I.D. 318, both previously discussed. An extensive opinion by the Department's Solicitor, *Indian Rights in Columbia River Reservoir*, 59 I.D. 147, concerning rights reserved to the Colville and Spokane Indians by the Act of June 29, 1940, 54 Stat. 703, also affirms the continued existence of the reservation.

**C. THE BOUNDARIES OF THE COLVILLE RESERVATION HAVE
CONTINUED UNCHANGED SINCE 1892**

There has been no change in the boundaries of the Colville Reservation since the northern half of the reservation was added to the public domain by the Act of July 1, 1892, 27 Stat. 62, Appendix A, *infra*, p. 32.

But for the opinion of the Supreme Court of the State of Washington involved here, there would be no question that the boundaries of the reservation had remained constant but for an unpublished memorandum from the Acting Secretary of the Interior to the Commissioner of Indian Affairs, dated September 28, 1939. That opinion, Appendix C, *infra*, p. 41, concluded that the Act of 1906, by authorizing disposition of surplus lands, "had the effect of redefining the boundaries of the [Colville] reservation so as to exclude therefrom" certain lands "located on the outer edge of the reservation."¹⁰ The object of the memorandum appears to have been to permit the introduction of liquor into a construction town, Mason City, located on the Columbia River and populated by workers employed on the Grand Coulee Dam project. Even so, the reasoning supporting the result achieved in that memorandum was repudiated in a Solicitor's memorandum for the Commissioner of Indian Affairs, dated August 7, 1941, Appendix D, *infra*, p. 46.

The Acting Secretary, in his 1939 memorandum, like the Supreme Court of the State of Washington, failed to consider the distinction involved in a "cession and removal" provision (Act of 1892) and a "relinquishment in trust" provision (Act of 1906). The distinction is recognized in the Solicitor's unpublished 1941 memorandum, Appendix D, *infra*, p. 46.

¹⁰ The memorandum is cited as a memorandum of the Solicitor of the Department of the Interior in Cohen, *Handbook of Federal Indian Law* (1942), p. 356, fn. 76.

The Acting Secretary relied in his 1939 memorandum upon the amendment to the Act of 1906 by the Act of August 31, 1916, 39 Stat. 672, extending the liquor laws to the area affected by the Act of 1906. His reliance was misplaced. The laws prohibiting the introduction of liquor into the Indian country did not apply to fee patented lands within Indian reservations. *Clairmont v. United States*, 225 U.S. 551. Considerable of the lands within the Colville Reservation had been disposed of and fee patents issued pursuant to the Act of 1906 (R. 25). Congress merely undertook, by the Act of 1916, to apply the Indian liquor laws in an all-inclusive manner within the Colville Reservation. This is shown by the Senate and House Reports on the bill, H.R. 1557, which became the 1916 amendment to the Act of 1906. H.Rept. No. 996 and S.Rept. No. 798, 64th Cong., 1st Sess. The report of the Department of the Interior, contained in the Senate and House Reports, represented that the principal purpose of the amendment was to provide for certain town-sites within the Colville Reservation. If liquor traffic was to be prohibited on all parts of the Colville Reservation—as Congress apparently desired—the amendment was necessary. The Department's report noted that similar provisions were contained in many contemporary statutes and had "been of great assistance in preventing introduction of liquor into the Indian country." Thus, it is clear that, long subsequent to the 1906 opening of the diminished Colville Reservation, and only three years prior to the decision of the Supreme Court of the State of Washington in the *Best* case, 107 Wash. 238, 241, 181 Pac. 688, 689, the Colville Reservation was recognized as Indian country and as an Indian reservation by the Department of the Interior and the Congress.

In *J. H. Seupelt*, 43 L.D. 267, 268, the Department of the Interior recognized in 1914 that the east, south and west

boundaries of the diminished Colville Reservation were in the Columbia and Okanogan Rivers. This recognition was accepted without qualification in the 1945 opinion of *Indian Rights in the Columbia River Reservoir*, 59 I.D. 147, 152, 162. When the Grand Coulee Dam project was begun, Indian tribal and allotted lands of the Colville Reservation located along the shoreline of the anticipated reservoir were acquired by the United States. Act of June 29, 1940, 54 Stat. 703; 59 I.D. at p. 155. But in the view of the Solicitor, the transfer of title did not alter the reservation boundaries. He said, 59 I.D. at p. 175, fn. 60:

Even if it were assumed that the Indian titles to the shorelands and the river bed have both been extinguished, it would not necessarily follow that the effect was to redefine the reservation boundaries and thus to exclude the acquired lands. In *United States v. Celestine*, 215 U.S. 278 (1909), the Court declared in general terms that when land is fee patented it still remains within the limits of the reservation. If this is so, it is difficult to see why acquisition of title by the United States should *ipso facto* terminate the reservation, especially since the Indians still have a limited number of special rights in the areas in question. A reservation is not a grant and has nothing to do with title. *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 86 (1918).

Further evidence that a change of title from trust to fee status, whether occasioned by acquisition of land by the United States or by sales to whites following the 1906 Act, did not change the boundaries of the Colville Reservation, is found in the compilation of material relating to Indians prepared by the Legislative Reference Service, Library of Congress, for the House Committee on Public Lands (1950). H.Rept. No. 2503, 82d Cong., 2d Sess., App. II, p. 133. The

Colville Reservation is discussed at pp. 560-561, 788, 1262-1263. The compilation states (p. 788) that there are 22 310 acres of fee patented lands "within" the Colville Reservation. The town of East Omak, where the alleged offense occurred, is described at p. 1262 as one "of the principal Indian settlements within [Colville] reservation" ¹¹ Map No. 85, Addendum IV of H.Rept. No. 2503 shows the Colville Indian Reservation.

D. ALL LAND WITHIN THE LIMITS OF THE COLVILLE INDIAN RESERVATION, WHETHER HELD IN TRUST OR FEE, IS WITHIN INDIAN COUNTRY

As indicated, there is a considerable body of legislation and case law on the subject of criminal jurisdiction within the Indian country.¹² Certain guide lines have been established. Thus, generally, offenses committed by non-Indians against non-Indians, in the Indian country, where Indians are not involved, are punishable by the states. *United States v. McBratney*, 104 U.S. 621; *N. Y. ex rel. Ray v. Martin*, 326 U.S. 496. "[I]f the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive." *Williams v. Lee*, 358 U.S. 217, 220. Three major statutes confer federal jurisdiction: (1) the Ten Major Crimes Act (18 U.S.C. § 1153), (2) the act extending to Indian country the general laws of the United States as to the punishment of

¹¹ In a memorandum filed in this case in September, 1960, the Solicitor General stated that the Department of the Interior has continued to recognize the entire diminished or south half of the reservation as the Colville Reservation with the boundaries as they existed after the north half was restored to the public domain in 1892. The Solicitor General states the view of the United States to be that "the land in issue seems to us to be in 'Indian Country.'"

¹² Cohen, *Handbook of Federal Indian Law* (1942), pp. 5-8, 358-365; *Federal Indian Law*, Department of the Interior (1958), pp. 12-17, 307-326.

crimes committed on lands within the sole and exclusive jurisdiction of the United States (18 U.S.C. § 1152), and (3) the Assimilative Crimes Act (18 U.S.C. § 13), incorporating the criminal laws of the states into the laws of the United States.¹³

The area of controversy is whether fee-patented land within the boundaries of an Indian reservation is "Indian country". To state the question another way, may a state, as to fee-patented land within an Indian reservation declared by 18 U.S.C. § 1151(a) to be Indian country, seize jurisdiction and convict an Indian of an offense covered by federal law? The land upon which petitioner's offense occurred is fee-patented (R. 13; memorandum of the Solicitor General filed in this case in September, 1960).

The author¹⁴ of the *Handbook of Federal Indian Law* (1942), p. 359, stated that "It is questionable whether land held by an Indian under a fee patent without restriction is Indian country for purposes of federal criminal jurisdiction; the weight of authority is that the land is not 'Indian country' within the meaning of federal penal statutes." Two cases are cited, *Eugene Sol Louie v. United States*, 274 Fed. 47 (C.A. 9) and *State v. Monroe*, 83 Mont. 556, 274 Pac. 840. This work was compiled before the amendments of June 25, 1948, c. 645, 62 Stat. 757, and May 24, 1949, c. 139, § 25, 63 Stat. 94, which brought the present wording of 18 U.S.C. § 1151(a).

¹³ *Williams v. United States*, 327 U.S. 711. The offense of attempted burglary of which petitioner was convicted, if not within the Ten Major Crimes Act (R. 24), may be punishable under the Assimilative Crimes Act, unless the alleged offense comes within the three exceptions to federal jurisdiction enumerated in 18 U.S.C. § 1152.

¹⁴ Felix S. Cohen, "an acknowledged expert in Indian law." *Squire v. Capoeman*, 351 U.S. 1, 8-9.

After the enactment in 1948 of 18 U.S.C. § 1151(a), the Department of the Interior revision of Cohen's handbook, *Federal Indian Law*, p. 310, stated that "the weight of authority is that the land [held by an Indian under fee patent] is not 'Indian country' . . . unless it is within the exterior boundaries of a reservation", citing *Williams v. United States*, 215 F.2d 1 (C.A. 9), cert. den. 348 U.S. 938, and *Irvine v. District Court*, 125 Mont. 398, 239 P.2d 272. Both of those cases rejected the proposition that ownership of land within a reservation is of any significance. In *In re Andy*, 49 W.2d 449, 302 P.2d 962, the Supreme Court of the State of Washington expressly followed *Irvine, supra*, with respect to Indian reservations in its state.¹⁵ Other recent federal court decisions sustaining federal jurisdiction over offenses on fee-patented land within the limits or boundaries of a reservation are *Guith v. United States*, 230 F.2d 481 (C.A. 9); and *United States v. Hilderbrand*, 190 F.Supp. 283 (D.C. Kan.), aff'd *per curiam sub nom. Hilderbrand v. United States*, 287 F.2d 886 (C.A. 10).¹⁶

The statute involved, 18 U.S.C. § 1151(a), Appendix A, *infra*, p. 31, is clear. It says that all land within the limits of Indian reservations is Indian country "notwithstanding the issuance of any patent" It would be difficult to find a clearer pronouncement.

The earliest antecedent of 18 U.S.C. § 1151(a) is the Seven Major Crimes Act, § 9 of the Act of March 3, 1885, 23 Stat. 362, 385, the second branch of which provided that:

¹⁵ Additional Washington decisions are cited, *infra*, at p. 28 of this brief. Other Montana decisions in accord with *Irvine* are *State v. Pepion*, 125 Mont. 13, 230 P.2d 961; *Bokas v. District Court*, 128 Mont. 37, 270 P.2d 396.

¹⁶ See also *State ex rel. Bear v. Jameson*, 77 S. Dak. 527, 95 N.W. 2d 181; *Application of De Marias*, 77 S. Dak. 294, 91 N.W.2d 480.

... all such Indians committing any of the above crimes [murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny] against the person or property of another Indian or other person within the boundaries of any State of the United States, and *within the limits of any Indian reservation*, shall be subject to the same laws, tried in the same courts and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States.¹⁷ (Italics added.)

The Act of 1885 was passed as a result of the decision in *Ex parte Crow Dog*, 109 U.S. 556, holding that the jurisdiction of the United States did not extend to offenses by one Indian against another Indian within the Indian country.¹⁸ The validity of the act was sustained in *United States v. Kagama*, 118 U.S. 375. This Court said (p. 383) that the act "does not interfere with the process of the State courts within the reservation, nor with the operation of State laws upon white people found there. Its effect is confined to the acts of an Indian of some tribe, of a criminal character, committed within the limits of the reservation."

Prior to the enactment of the Seven Major Crimes Act in 1885, the criminal laws relating to offenses by Indians referred to offenses committed "in the Indian country." R.S. §§ 2145, 2146. Prior to 1885, the term "Indian country" had been interpreted, with reference to the definition in the Act of June 30, 1834, 4 Stat. 729, as being land to which the Indian title had not been extinguished. *Bates v. Clark*, 95

¹⁷ The list of offenses was increased to ten by additions on March 4, 1909, 35 Stat. 1088, 1151, and June 28, 1932, 47 Stat. 336, 337.

¹⁸ Tribal jurisdiction over such offenses from earliest times was recognized in § 2 of the Act of March 3, 1817, 3 Stat. 383.

U.S. 204; *Ex parte Crow Dog*, 109 U.S. 556, 561-562. In the Seven Major Crimes Act, Congress used the words "within the limits of any Indian reservation" instead of the term "Indian country."

Later, in *United States v. Celestine*, 215 U.S. 278, *supra*, p. 11, this Court sustained federal jurisdiction over an Indian charged with murder committed on patented land within the Tulalip Reservation in the State of Washington. The patent provided for cancellation if the Indian patentee ceased to occupy or till the land but that was not a material fact as the Court explained in discussing the difference between "reservation" and "Indian country" (215 U.S. 278, 285):

... But the word "reservation" has a different meaning, for while the body of land described in the section quoted as "Indian country" was a reservation, yet a reservation is not necessarily "Indian country." The word is used in the land law to describe any body of land, large or small, which Congress has reserved from sale for any purpose. It may be a military reservation, or an Indian reservation, or, indeed, one for any purpose for which Congress has authority to provide, and when Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress.

In *Clairmont v. United States*, 225 U.S. 551, this Court denied the application of the laws prohibiting the introduction of liquor "into the Indian country" in a situation where the alleged offense occurred on a railroad right-of-way granted by Congress through an Indian reservation. Because the grant had extinguished the Indian title, the right-of-way was not Indian country.

Subsequent state decisions such as *State v. Big Sheep*, 75 Mont. 219, 243 Pac. 1067, and *State v. Johnson*, 212 Wis. 301, 249 N.W. 284, relied upon *Clairmont*, *supra*, in upholding state jurisdiction over Indians whose offenses occurred on fee-patented land within an Indian reservation. Those cases did not recognize the difference between the use of "Indian country" in the Indian liquor statutes and "within the limits of any Indian reservation" in the Major Crimes Act. The difference was recognized in *United States v. Frank Black Spotted Horse*, 282 Fed. 349, 353-354 (S. Dak.), where the court pointed out the considerable difficulties in fixing reservation boundaries and determining the jurisdiction of the courts if boundaries and jurisdiction were affected by the constant changes in title as fee patents are issued from time to time. As the Solicitor of the Department of Interior pointed out, *Patents in Fee*, 61 I.D. 298, 304, law enforcement officers would have to be armed with tract books to ascertain jurisdiction.

In 1932, the Major Crimes Act was amended and Congress used the words "on and within any Indian reservation . . . including rights of way running through the reservation" to describe the extent of federal jurisdiction over the ten major crimes. Act of June 28, 1932, 47 Stat. 336. This amendment was in accord with the reasoning in *United States v. Celestine*, 215 U.S. 278, 285, that all tracts within a reservation remained parts of the reservation until separated therefrom by Congress. It should have removed the confusion in some state cases where state jurisdiction was upheld because "Indian title" had been extinguished. In any event, any possible doubt remaining as to federal jurisdiction over fee-patented lands, other than rights-of-way, within the limits of Indian reservations, is answered by the insertion in 18 U.S.C. § 1151(a), Appendix A, *infra*, p. 31, of the words "notwithstanding the issuance of any patent"

in the definition of "Indian country" as "all lands within the limits of any Indian reservation under the jurisdiction of the United States Government" ¹⁹ Federal jurisdiction is exclusive, 18 U.S.C. §§ 1153, 3242.

The overriding reason for retaining federal jurisdiction throughout an Indian reservation was noted in *United States v. Soldana*, 246 U.S. 530, 533, to be the protection of the Indian wards of the federal government. In *Worcester v. Georgia*, 6 Pet. 515, 561, this Court, through Chief Justice Marshall, held that the State of Georgia's assertion of power within the lands of the Cherokee Nation to prevent a white man, licensed as a missionary by the federal government, from going into Cherokee area was invalid. This Court reasoned (p. 561):

The Cherokee nation . . . is a distinct community, occupying its own territory, . . . in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is by our constitution and laws, vested in the government of the United States.

And in *United States v. Kagama*, 118 U.S. 375, which sustained the constitutionality of the Seven Major Crimes Act of 1885, this Court said (pp. 384-385):

The power of the General Government over these remnants of a race once powerful, now weak and

¹⁹ The Indian liquor laws continue to exclude rights-of-way within Indian reservations from their application. 18 U.S.C. §§ 1154(c), 1156. The Indian liquor laws, 18 U.S.C. §§ 1154(c) and 1156, also exclude from their application "fee-patented lands in non-Indian communities." In these respects, they differ from the definition of "Indian country" in 18 U.S.C. § 1151.

diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theatre of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.

The federal policy and the power over the affairs of its Indian wards is reviewed, most recently in *Williams v. Lee*, 358 U.S. 217, 220-221, where it was said:

... Congress has followed a policy calculated eventually to make all Indians full-fledged participants in American society. This policy contemplates criminal and civil jurisdiction over Indians by any State ready to assume the burdens that go with it as soon as the educational and economic status of the Indians permits the change without disadvantage to them. See H.R. Rep. No. 848, 83d Cong., 1st Sess. 3, 6, 7 (1953). Significantly, when Congress has wished the States to exercise this power it has expressly granted them the jurisdiction which *Worcester v. Georgia* had denied.

Congress in 1953 consented to assumption by states of jurisdiction over criminal and civil matters involving Indians, Act of August 15, 1953, §§ 6, 7, 67 Stat. 588, 590, but there are burdens which some states have not been willing to assume. The legislature of the State of Washington has conditioned its assumption of jurisdiction upon Indian consent and, with respect to the "Colville, Spokane, or Yakima Tribes or Reservations," has specified that the resolutions of the Tribal Councils consenting to state assumption of jurisdiction must be ratified by a two-thirds majority of the adult enrolled tribal members. Laws of 1957, Chapter 240 (RCW 37.12.020). The Indians of the

Colville Reservation have not assented to state jurisdiction. As of May 5, 1960, only nine of the twenty-one tribes in the State of Washington had given their consent. *White v. Schneckloth*, — W.2d —, 351 P.2d 919. At the time of the crime allegedly committed by petitioner, under the laws of the United States and of the State of Washington, the state did not have jurisdiction to try petitioner for the alleged offense.

E. THE SUPREME COURT OF THE STATE OF WASHINGTON HAS CORRECTLY INTERPRETED THE LAW RELATING TO THE YAKIMA RESERVATION; ITS INTERPRETATION OF THE COLVILLE STATUTES SHOULD ACCORD THE SAME TREATMENT

In at least six instances, the Supreme Court of the State of Washington has discharged from state custody Indians whose offenses were committed within the boundaries of the Yakima Indian Reservation. *In re Andy*, 49 W.2d 449, 302 P.2d 962; *In re Monroe*, 55 W.2d 107, 346 P.2d 667; *In re Wesley*, 55 W.2d 90, 346 P.2d 658; *In re Charley*, — W.2d —, 348 P.2d 977; *White v. Schneckloth*, — W.2d —, 351 P.2d 919; and *Arquette v. Schneckloth*, — W.2d —, 351 P.2d 921. *Monroe* involved an offense committed in the town of Wapato; the others in the City of Toppenish, both within the Yakima Reservation.

The Act of December 21, 1904, 33 Stat. 595, authorized allotments to every member of the Yakima Tribe and authorized disposition of the remaining lands not allotted or reserved, much as did the Act of March 22, 1906, for the Colville Reservation. As will be seen from a comparison of the two statutes shown in Appendix E, *infra*, p. 50, the 1904 Act provided that all of the lands were to be disposed of, the United States agreed to serve as trustee, and was to apply the proceeds to the benefit of the Indians. On May 6, 1910, 36 Stat. 349, a new Section 11 was added to the Act of 1904 extending Indian liquor laws

to the Yakima Reservation for a 25-year period. A similar provision without a 25-year limitation was added to the 1906 Colville Act by the amendment of 1916,²⁰ 39 Stat. 672. There is no valid distinction between the two statutes. The decisions of the Supreme Court of the State of Washington treating the Yakima Reservation as Indian country are eminently correct. That court's failure to reconsider *State, ex rel. Best v. Superior Court*, 107 Wash. 238, 241, 181 Pac. 688, 689, particularly in the light of its more recent opinions dealing with the Yakima Reservation, constitutes error.

The Washington court recognized the existence of the Colville Indian Reservation in *State ex rel. Adams v. Superior Court*, — W.2d —, 356 P.2d 985, 987, 988, involving custody of minor Indian children residing on an allotment on the reservation. Petitioner's alleged offense occurred on fee land, but all land within an Indian reservation is Indian country. 18 U.S.C. § 1151(a).

Conclusion

For the foregoing reasons, the ruling of the Supreme Court of the State of Washington is erroneous and should be reversed and that court instructed to grant petitioner's application for habeas corpus.

Respectfully submitted,

GLEN A. WILKINSON
Counsel for Petitioner

CLARON C. SPENCER
Of Counsel

²⁰ The purpose of the amendment is explained by the Department of the Interior in H.Rept. No. 996 and S.Rept. No. 798, 64th Cong., 1st Sess., discussed, *supra*, p. 18.



APPENDIX A**STATUTES AND OTHER AUTHORITIES INVOLVED***Jurisdictional Statutes:*

Relevant portions of statutes relating to crimes in the Indian country are as follows:

18 U.S.C. 1151(a):

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,

18 U.S.C. 1153:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

.

As used in this section, the offense of burglary shall be defined and punished in accordance with the laws of the State in which such offense was committed.

18 U.S.C. 3242:

All Indians committing any of the following offenses, namely, murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny on and within the Indian country shall be tried in the same courts.

and in the same manner, as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States.

Statutes and Other Authorities Relating to the Colville Indian Reservation:

Relevant portions of statutes, the Executive Order of July 2, 1872 and the Presidential proclamation of May 3, 1916, concerning the Colville Indian Reservation:

Executive Order of July 2, 1872, 1 Kappler, Indian Affairs, Laws and Treaties (1904), p. 916:

It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by Executive order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River, on the west by the Okanagan River, and on the north by the British possessions, be, and the same is hereby, set apart as a reservation for said Indians, and for such other Indians as the Department of the Interior may see fit to locate thereon.

Act of July 1, 1892, 27 Stat. 62:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subject to the reservations and allotment of lands in severalty to the individual members of the Indians of the Colville Reservation in the State of Washington herein provided for, all the following described tract or portion of said Colville Reservation, namely: Beginning at a point on the eastern boundary line of the Colville Indian Reservation where the township line between townships thirty-four and thirty-five north, of range thirty-seven east, of the Willamette meridian, if extended west, would intersect the same, said point being in the middle of the channel of the Columbia River, and running thence west parallel with the forty-ninth parallel of latitude to the western

boundary line of the said Colville Indian Reservation in the Okanagon River, thence north following the said western boundary line to the said forty-ninth parallel of latitude, thence east along the said forty-ninth parallel of latitude to the north-east corner of the said Colville Indian Reservation, thence south following the eastern boundary of said reservation to the place of beginning, containing by estimation one million five hundred thousand acres, the same being a portion of the Colville Indian Reservation created by executive order dated July second, eighteen hundred and seventy-two, be, and is hereby, vacated and restored to the public domain, notwithstanding any executive order or other proceeding whereby the same was set apart as a reservation for any Indians or bands of Indians, and the same shall be open to settlement and entry by the proclamation of the President of the United States and shall be disposed of under the general laws applicable to the disposition of public lands in the State of Washington.

Sec. 2. That the net proceeds arising from the sale and disposition of the lands to be so opened to entry and settlement shall be set apart in the Treasury of the United States for the time being, but subject to such future appropriation for public use as Congress may make, and that until so otherwise appropriated may be subject to expenditure by the Secretary of the Interior from time to time, in such amounts as he shall deem best, in the building of schoolhouses, the maintenance of schools for such Indians, for the payment of such part of the local taxation as may be properly applied to the lands allotted to such Indians, as he shall think fit, so long as such allotted lands shall be held in trust and exempt from taxation, and in such other ways as he may deem proper for the promotion of education, civilization, and self-support among said Indians.

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Act of April 28, 1904, 33 Stat. 567:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to permit the Kellar and Indiana Consolidated Smelting Company, a corporation organized under the laws of the State of Washington, to construct a smelter in the immediate vicinity of the San Poil River, in the south half of the Colville Indian Reservation; that the smelter shall be located on the San Poil River, and that permission be granted to construct a flume from the site of the smelter to a point on the San Poil River where a water supply can be made available; that six acres of land be set aside for the site of the smelter, and a strip of land of sufficient width allowed for the erection and construction of the flume; that permission shall be given to the Kellar and Indiana Consolidated Smelting Company to purchase timber and stone necessary for the work of construction; that the Secretary of the Interior shall permit the work to be done under such rules and regulations as he may prescribe, and he shall also prescribe the prices the said Kellar and Indiana Consolidated Smelting Company shall pay for the land, the stone, and the timber used in the construction work: *Provided*, That the laws regulating intercourse with Indians shall be applicable to the lands set aside under this Act, so long as the south half of the Colville Reservation remains as an Indian reservation.

Act of March 22, 1906, 34 Stat. 80-82:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands in the diminished Colville Indian Reservation, in the State of Washington.

Sec. 2. That as soon as the lands embraced within the diminished Colville Indian Reservation shall have

been surveyed, the Secretary of the Interior shall cause allotments of the same to be made to all persons belonging to or having tribal relations on said Colville Indian Reservation, to each man, woman, and child eighty acres, and upon the approval of such allotments by the Secretary of the Interior, he shall cause patents to issue therefor under the provisions of the general allotment law of the United States.

Sec. 3. That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said diminished Colville Indian Reservation shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under the general mining laws of the United States, and, upon completion of the classification and appraisement, such surplus lands shall be open to settlement and entry under the provisions of the homestead laws at not less than their appraised value in addition to the fees and commissions now prescribed by law for the disposition of lands of the value of one dollar and twenty-five cents per acre by proclamation of the President, which proclamation shall prescribe the manner in which these lands shall be settled upon, occupied, and entered by persons entitled to make entry thereof

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Sec. 6. That the proceeds not including fees and commissions arising from the sale and disposition of the lands aforesaid, including the sums paid for mineral and town-site lands shall be, after deducting the expenses incurred from time to time in connection with the allotment, appraisement, and sales, and surveys, herein provided, deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians belonging and having tribal

rights on the Colville Indian Reservation, in the State of Washington, and shall be expended for their benefit, under the direction of the Secretary of the Interior, in the education and improvement of said Indians, and in the purchase of stock cattle, horse teams, harness, wagons, mowing machines, horserakes, thrashing machines, and other agricultural implements for issue to said Indians, and also for the purchase of material for the construction of houses or other necessary buildings, and a reasonable sum may also be expended by the Secretary, in his discretion, for the comfort, benefit, and improvement of said Indians: *Provided*, That a portion of the proceeds may be paid to the Indians in cash per capita, share and share alike, if, in the opinion of the Secretary of the Interior, such payments will further tend to improve the condition and advance the progress of said Indians, but not otherwise.

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Sec. 8. That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations as to the manner of sale, notice of same, and other matters incident to the carrying out of the provisions of this Act, and with authority to reappraise and reclassify said lands if deemed necessary from time to time, and to continue making sales of the same, in accordance with the provisions of this Act, until all of the lands shall have been disposed of.

Sec. 9. That nothing in this Act contained shall be construed to bind the United States to find purchasers for any of said lands, it being the purpose of this Act merely to have the United States to act as trustee for said Indians in the disposition and sales of said lands and to expend or pay over to them the net proceeds derived from the sales as herein provided.

Sec. 10. That to enable the Secretary of the Interior to survey, allot, classify, appraise, and conduct the sale and entry of said lands as in this Act provided the sum of seventy-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated,

from any money in the Treasury not otherwise appropriated, the same to be reimbursed from the proceeds of the sales of the aforesaid lands: *Provided*, That when funds shall have been procured from the first sales of the land the Secretary of the Interior may use such portion thereof as may be actually necessary in conducting future sales and otherwise carrying out the provisions of this Act.

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Presidential Proclamation of May 3, 1916, 39 Stat. 1778:

I, Woodrow Wilson, President of the United States of America, by virtue of the power and authority vested in me by the Act of Congress approved March 22, 1906 (34 Stat. L., 80) do hereby prescribe, proclaim, and make known, that all the non-mineral, unallotted and unreserved lands within the diminished Colville Indian Reservation, in the State of Washington, classified as irrigable lands, grazing lands, or arid lands, shall be disposed of under the general provisions of the homestead laws of the United States and of the said Act of Congress, and shall be opened to settlement and entry and settled upon, occupied, and entered only in the manner herein prescribed: *Provided*, That all lands classified as timber or mineral, all lands designated for irrigation by the Government, and all lands within the following townships and parts of townships shall not be disposed of under this proclamation:

Townships 31, 32, 33, and 34 north, range 35 east; township 30 north, range 31 east; township 31 north, range 30 east; north half of township 31 north, range 28 east; townships 32, 33, and 34 north, range 28 east; south half and south half of north half of township 33 north, range 27 east; and fractional part north and east of Lake Omanche of township 32 north, range 27 east.

1. A registration for the lands will be conducted at the cities of Spokane, Wenatchee, Colville, Wilbur, Republic and Omak, Washington, beginning July 5,

and ending July 22, 1916, Sunday excepted, under the supervision of John McPhaul, Superintendent of the opening. Any person qualified to make entry under the general provisions of the homestead law may register.

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Act of August 31, 1916, 39 Stat. 672:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, . . . that one section, numbered thirteen, as hereinafter provided, be, and the same hereby is, added to the said Act.

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Sec. 13. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the State or otherwise disposed of, shall be subject to the laws of the United States prohibiting the introduction of intoxicants into the Indian country until otherwise provided by Congress.

Act of July 24, 1956, 70 Stat. 626-627:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the undisposed-of lands of the Colville Indian Reservation, Washington, dealt with by the Act of March 22, 1906 (34 Stat. 80), are hereby restored to tribal ownership to be held in trust by the United States to the same extent as all other tribal lands on the existing reservation, subject to any existing valid rights.

Sec. 2. For the purpose of effecting land consolidations between the Colville Indians and non-Indians in Ferry and Okanogan Counties, the Secretary of the Interior is hereby authorized, with the consent of the tribal council as evidenced by a resolution adopted in accordance with the constitution and bylaws of the tribe, under such regulations as he may prescribe, to sell or exchange tribal lands in connection with the

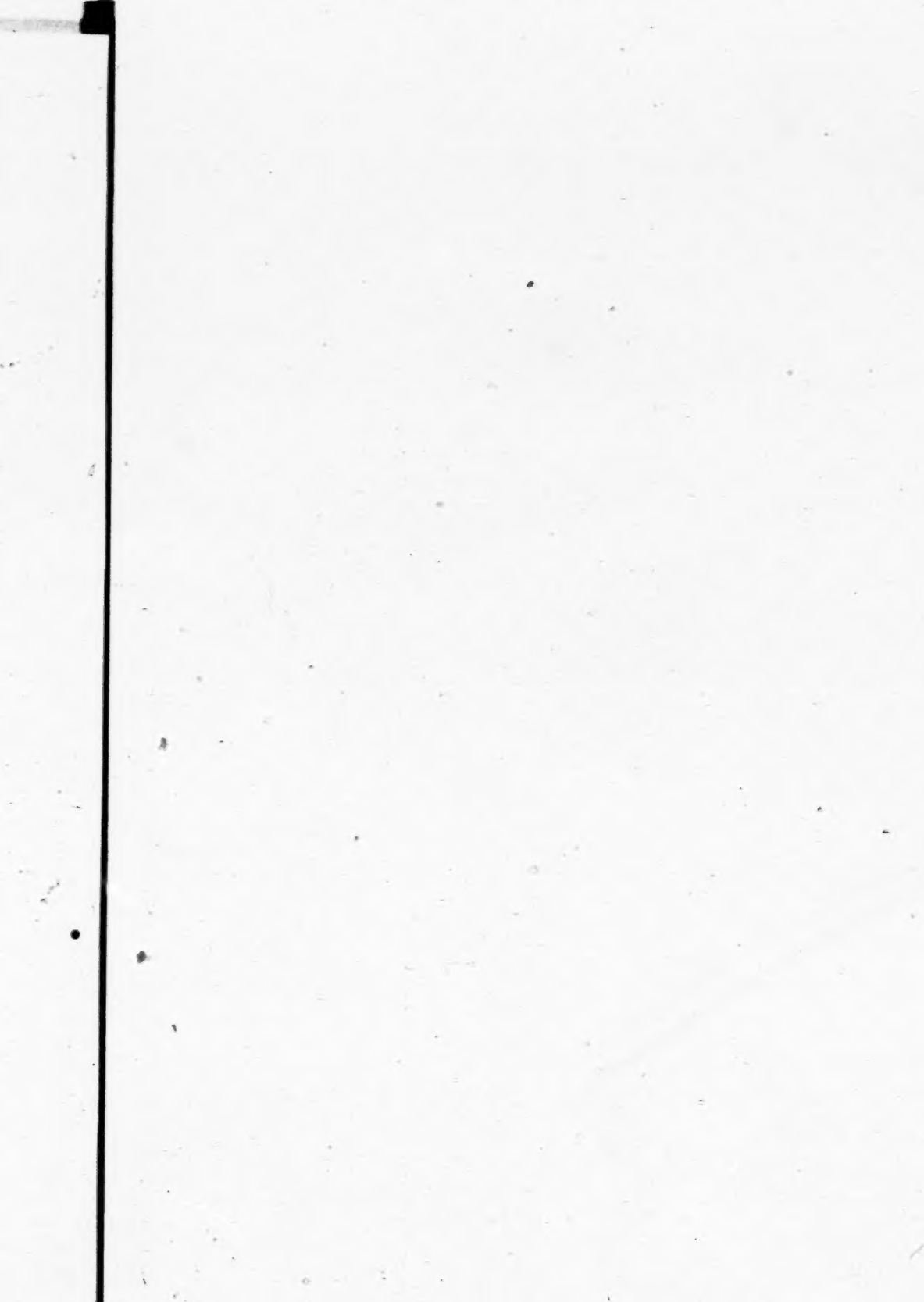
acquisition of lieu lands, and to acquire through purchase, exchange, or relinquishment, lands or any interest in lands, water rights or surface rights. The acquisition of lands pursuant to this Act shall be limited to lands within the boundary of the reservation. Exchanges of lands, including improvements thereon, shall be made on the basis of approximate equal value. In carrying out the provisions of this Act, if non-Indian lands are involved the board of county commissioners of counties in which land is located shall by proper resolution consent before such non-Indian land is acquired for the tribe or an individual Indian. No lands or interests in lands owned by the Confederated Tribes of the Colville Reservation shall be subject to disposition hereafter without the consent of the duly authorized governing body of the tribes, and no lands or interests in lands shall be acquired for the tribes without the consent of the said governing body.

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APPENDIX B

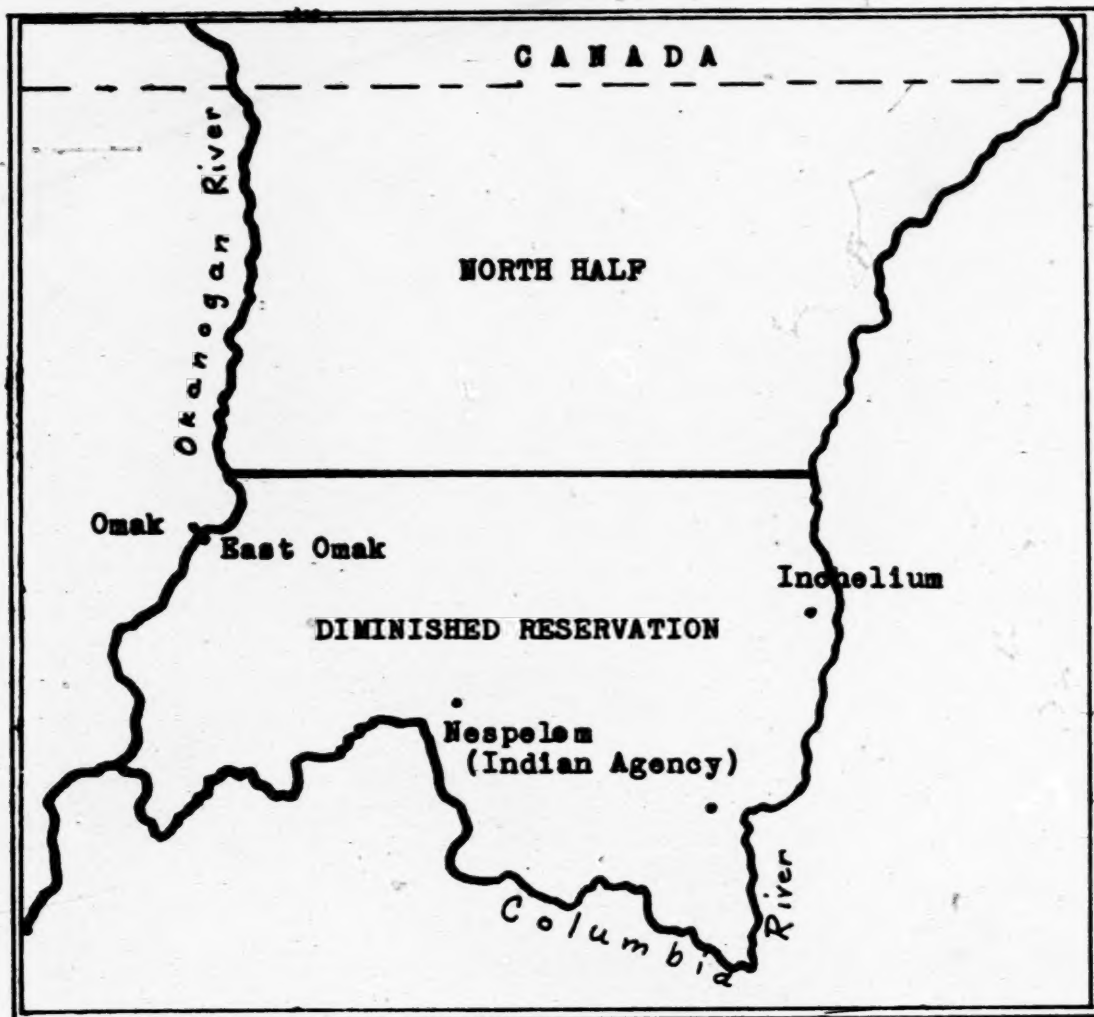
DIAGRAM OF COLVILLE INDIAN RESERVATION

(See Opposite 39)



Appendix B

Colville Indian Reservation Washington





APPENDIX C**Acting Secretary's Memorandum of September 28, 1939:****MEMORANDUM to the Commissioner of Indian Affairs:**

The attached letter to the Attorney General relating to the applicability of the Indian liquor laws in the town of Mason City, Washington, is returned herewith for further consideration.

Mason City is located on the Columbia River and is occupied by the staff and employees of the Consolidated Builders, Inc., which is engaged under contract with the Bureau of Reclamation in the completion of the Grand Coulee Dam. The land which it occupies was formerly a part of the Colville Indian Reservation but was included in an area designated for sale as surplus unallotted land under the act of March 22, 1906 (34 Stat. 80), as amended by the act of August 31, 1916 (39 Stat. 672). It appears that part of the land was acquired as homestead under a fee patent by William Rath in 1922, while another tract was similarly acquired by Samuel J. Seaton in 1927. Subsequently, in a declaration of taking filed in December 1933 the land was acquired by the United States through condemnation proceedings and has since that time been subject to the jurisdiction of the Bureau of Reclamation in connection with the Grand Coulee Dam construction project.

Construction work on the dam was originally undertaken under a contract with the Mason-Walsh-Atkinson-Kier Company. In pursuance of this contract, the company erected buildings on the land, which included structures for administration of the work and the housing and furnishing of other facilities for the men employed on the dam. Among the latter were a recreation hall containing a restaurant, billiard and pool tables, and other recreational equipment.

The company held a license from the Washington State Liquor Control Board authorizing it to sell light wines and beer in the hall. At the completion of the original contract the construction camp was acquired from the company by the United States and turned over by it to the Consolidated

Builders, Inc., which contracted to complete the work on the dam, and undertook to assume the operation and maintenance of the camp and its facilities. The Consolidated Builders, Inc., has during the past year been in possession of a license from the State of Washington authorizing the sale of light wines and beer at the recreation hall, as in the past. This license expires on September 30, 1939.

It appears that a number of Colville, and perhaps other, Indians are employed in the work on the dam. On the other hand, there appear to be no Indians living on allotments within three miles of the town. Both the original contractor and the Consolidated Builders, Inc., have made it a practice not to sell either light wines or beer to any of their employees identifiable as Indians. The present contractor has undertaken to continue this practice in the future. This is, of course, required by the terms of section 241, title 25, United States Code, prohibiting sales of intoxicating liquors to Indian wards of the Government.

In these circumstances, the proposed letter to the Attorney General takes the position that, upon both administrative and legal grounds, not only the prohibition against sales of liquor to Indians should be in force but the laws making introduction of liquor into Indian country and Indian reservations as well.

The act of August 31, 1916 (39 Stat. 672), provided that the lands included in the surplus area to be disposed of, as well as the lands allotted, retained or reserved within the diminished reservation, were to continue to be subject "to the laws of the United States prohibiting the introduction of intoxicants into the Indian country until otherwise provided by Congress." The lands now occupied by Mason City were undoubtedly within this area and would today be subject to the Indian liquor laws were it not for the fact that the contingency which Congress provided should terminate the application of said laws has occurred in respect to the lands outside the diminished reservation. It was provided by Congress in the act of June 27, 1934 (48 Stat. 1245)

"That hereafter the special Indian liquor laws shall not apply to former Indian lands now outside of any existing Indian reservation in any case where the land

is no longer held by Indians under trust patents or under any other form of deed or patent which contains restrictions against alienation without the consent of some official of the United States Government: *Provided, however,* That nothing in this Act shall be construed to discontinue or repeal the provisions of the Indian liquor laws which prohibit the sale, gift, barter, exchange, or other disposition of beer, wine, and other liquors to Indians of the classes set forth in the Act of January 30, 1897 (29 Stat. L. 506), and section 241, title 25, of the United States Code."

This act did not, and could not, change the boundaries of any Indian reservation. It did, however, have the effect of freeing from the operation of the liquor laws except as to sales to Indians those lands which were on the date of said act outside the boundaries of existing reservations. The question to be determined, therefore, is whether the land involved was on June 27, 1934, within the boundaries of the Colville Reservation.

In my opinion, the act authorizing the sale of surplus lands of the Colville Reservation had the effect of redefining the boundaries of the reservation so as to exclude therefrom the lands in question which are located on the outer edge of the reservation. These lands were to be sold or disposed of as other public lands under the homestead laws and were in fact so disposed of in 1922 and 1927. The very fact that in the statute authorizing such sale and disposition Congress specifically provided that the Indian liquor laws should nevertheless continue to apply in this area until it should direct otherwise is indication of its belief that its action removed the land from the Federal control exercised over reservation land. If the land was to be regarded as still within the reservation, there was no point in the exception made by Congress in regard to the application of the Indian liquor laws since those laws would continue to apply regardless of any special enactment. Meanwhile, Congress has now manifested its intention that the exception should not prevail as to lands outside existing reservations on June 27, 1934, from the date thereof. Congress has now "otherwise provided" that the Indian liquor laws, except as to sale

to Indians, shall not apply to these lands. I do not believe there is any legal basis for the Department to oppose the issuance of a new license to the Consolidated Builders, Inc., by the Washington State Liquor Control Board upon the expiration of the present license on September 30.

The proposed letter states, and I have been advised by representatives of your office, that such a holding as this will have unfortunate consequences from the point of view of effective enforcement of the Indian liquor laws. It is argued that the question involves not only allowance of the sale of beer and light wines in the Mason City construction camp, where the sale can be regulated by the contractor, and general supervision can be maintained by the Department through the Bureau of Reclamation which has jurisdiction over the land, but also the possibility that other areas which were eliminated from the reservation boundaries as originally defined by operation of the acts authorizing sale and disposition of the surplus lands will be used by other less scrupulous dealers to flood the reservation with liquor. This situation, however, exists in regard to virtually every reservation in the country, both those of which the original boundaries are still intact and those of which the boundaries have been diminished. It is inevitable in view of the fact that the various reservations are surrounded by white-owned areas where liquor is permitted and are in constant contact with the white communities which surround them. Laws which had one meaning when Indian country was a broad territory occupied mainly by Indians must be given new meaning if they are to apply successfully to Indian islands in a white area.

Where, as in the case at hand, the Indian title to a strip of land located on the outer boundaries of an Indian reservation has been extinguished, the act of June 27, 1934, *supra*, must, in my opinion, be applied. The reason for this is that such land can no longer be regarded as a part of the existing reservation. It is located outside, not inside, of the existing reservation. This does not mean, however, that the act is applicable in every case in which the Indian title to a tract of land has been extinguished. A different rule would very properly obtain where non-Indian lands

are entirely surrounded by Indian lands or where the non-Indian tract is located in an area predominantly Indian.

In the situation presented by the proposed letter to the Attorney General there is nothing in a holding that Mason City was on June 27, 1934, outside the boundaries of the Colville Reservation which will interfere with the effective enforcement of the laws prohibiting sales of liquor to Indians. The contractor has undertaken to see that these laws are enforced. There are no Indians living on allotments within a considerable distance of the town. On the other areas referred to in the letter, however, it might well be that to hold them to be outside the reservation boundaries would be to open up the entire reservation to intoxicating liquor. In such circumstances, a different ruling might well be made. In each case, a ruling by the Department will be necessary to determine whether the facts warrant a holding that a particular tract of land is within or without reservation boundaries. These cases, however, can and should await decision when they arise.

/s/ E. K. BURLEW
Acting Secretary of the Interior

APPENDIX D

Acting Solicitor's Memorandum of August 7, 1941:

MEMORANDUM *for the Commissioner of Indian Affairs:*

A question of the proper interpretation of the act of June 27, 1934 (48 Stat. 1245), modifying the operation of the Indian liquor laws on former Indian lands, and its application to the Yankton Indian Reservation was raised by the attached letter to the superintendent of the Rosebud Agency. The purport of that letter was to authorize Dr. Duggan, under the authority of the 1934 act, to introduce liquor into the town of Wagner within the original boundaries of the Yankton Reservation without regard to the Indian liquor laws. Because of the importance of this ruling in determining the proper application of the 1934 act to the Yankton and similar reservations, the letter to the superintendent was held for an opportunity for full consideration, with the understanding that there was no immediate necessity for acting upon the particular case discussed in the letter.

The question is whether the former Indian lands within the boundaries of the Yankton Indian Reservation, as it existed at the time of the agreement between the United States and the Yankton Sioux Indians of December 31, 1892, ratified in 1894 (28 Stat. 314), are relieved from the prohibitions of the Indian liquor laws by the 1934 act. The agreement of 1892 ceded to the United States the surplus unallotted lands within the Yankton Reservation, as created by the treaty of April 19, 1858 (11 Stat. 1143). Article XVII of the agreement contained the following prohibition on the sale of liquor on any class of lands within the reservation:

"No intoxicating liquors nor other intoxicants shall ever be sold or given away upon any of the lands by this agreement ceded or sold to the United States, nor upon any other lands within or comprising the reservations of the Yankton Sioux or Dakota Indians as described in the treaty between the said Indians and the

United States, dated April 19th, 1858, and as afterwards surveyed and set off to the said Indians * * * .”

The authority of Congress to make such a prohibition and its continuing application to the surplus ceded lands of the reservation were upheld in the case of *Perrin v. United States*, 232 U.S. 478 (1914), and no further question as to the application of the liquor laws to the Yankton Reservation arose until the passage of the 1934 act.

The precise wording of the 1934 act is important. It provides:

“The special Indian liquor laws shall not apply to former Indian lands now outside of any existing Indian reservation in any case where the land is no longer held by Indians under trust patents or under any other form of deed or patent which contains restrictions against alienation without the consent of some official of the United States Government: *Provided, however*, That nothing in this section shall be construed to discontinue or repeal the provisions of the Indian liquor laws which prohibit the sale, gift, barter, exchange, or other disposition of beer, wine, and other liquors to Indians of the classes set forth in the Act of January 30, 1897 (29 Stat. L. 506), and section 241 of this title.”

In order, therefore, to affirm that the town of Wagner is no longer covered by the liquor laws, it is necessary to hold that the town and other ceded lands are outside an existing Indian reservation. The letter to the superintendent makes this holding in the final paragraph, which reads as follows:

“In view of all the circumstances we believe that a liberal view of the said Act of June 27, 1934 would justify our ruling that said Act modified the provisions of said Art. XVII of the Agreement of December 31, 1892 so as to release the fee-patented lands of said area from the necessity of obtaining an Indian country permit for the introduction and possession of liquor therein, and that this ruling will be considered as extending to fee-patented lands outside the specific agency

or school reserves even though entirely surrounded by trust allotments, or trust allotments together with one or more of said reserves. We therefore so rule and accordingly modify the view expressed in our letter of March 1, 1937."

The circumstances which influenced the Indian Office decision are the large amount of reservation land which has been fee patented and the existence of towns within the reservation. These circumstances may be persuasive in reaching an administrative conclusion, but I cannot agree with the conclusion as a matter of law.

The agreement of 1892 provided for the sale of such lands within the reservation as were not allotted or used for designated purposes. It did not provide for the sale of a particular designated part of the reservation. The act should be distinguished from other cession acts which ceded a definite part of the reservation and treated the remaining area as a diminished reservation. The lands allotted on the Yankton Reservation were scattered over all the reservation, as may be seen from the attached map, prepared in 1933 or 1934, showing these allotments still restricted. Since the 1892 agreement there has been no redefinition by Congress of the Yankton Reservation nor determination that the reservation no longer exists. On the contrary, the reservation was referred to as a still existing unit in the acts of April 29, 1920 (41 Stat. 1468), and June 11, 1932 (47 Stat. 300)..

In the case of allotted reservations it is, of course, a common fact that lands within the boundaries are unrestricted in greater or lesser quantity. Where a large quantity becomes unrestricted, reason may exist for changing the boundaries of the reservation under congressional authority. Without congressional sanction, I know of no administrative authority to decide at what time and to what extent a reservation shall be considered reduced.

The legislative history and purpose of the 1934 act show that the term "outside of any existing Indian reservation" intended to mean outside of the exterior boundaries of any existing Indian reservation and did not mean outside of any remaining restricted lands within a reservation. As

the bill was originally introduced it contained the additional proviso that "all land within the exterior boundaries of an existing or subsequently established Indian reservation shall be subject to all Indian liquor laws now existing or hereafter provided by Congress." The omission of this clause indicates an intent not to change the status of the liquor laws within the boundaries of reservations. But the contrast between lands outside of the reservation and those within the boundaries of the reservation remains apparent from the body of the act.

In its report to Congress on the bill, the Department listed the Yankton Reservation with 13 other reservations as instances where Congress had provided for the continuation of the Indian liquor laws on former Indian lands. No distinction is made in this list between the reservations where a designated part was ceded and removed from the reservation, as in the case of the Rosebud, Pine Ridge, Standing Rock, and Cheyenne River Reservations, and those reservations where the ceded lands were scattered among the allotted lands and the reservation boundaries not changed, as at Fort Peck and Omaha. The listing must be considered informative and not determinative, particularly since the Department recommended that "all lands within the exterior borders of the present or subsequently established Indian reservations should be subject to the Indian liquor laws."

Amendatory legislation will be necessary if your office determines that the Indian liquor laws should not apply to former Indian lands within the boundaries of a reservation where such lands predominate over the remaining Indian lands.

/s/ **FELIX S. COHEN**
Acting Solicitor

APPENDIX E

Pertinent provisions of the Acts of December 21, 1904, 33 Stat. 595 (Yakima) and March 22, 1906, 34 Stat. 80-82 (Colville), as amended by the Acts of May 6, 1910, 36 Stat. 348-349 and August 31, 1916, 39 Stat. 672, are shown in parallel columns for easy comparison:

Yakima (1904)

... That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands embraced in the Yakima Indian Reservation proper, in the State of Washington, . . .

Sec. 3. That the residue of the lands of said reservation—that is, the lands not allotted and not reserved—shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions,

Sec. 4. That the proceeds arising from the sale and dis-

Colville (1906)

... That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell or dispose of unallotted lands in the diminished Colville Indian Reservation, in the State of Washington. . . .

Sec. 3. That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said diminished Colville Indian Reservation shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions,

Sec. 6. That the proceeds not including fees and com-

position of the lands aforesaid, including the sums paid for mineral lands, exclusive of the customary fees and commissions, shall, after deducting the expenses incurred from time to time in connection with the appraisements and sales, be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the Yakima Reservation,

• • • • •

missions arising from the sale and disposition of the lands aforesaid, including the sums paid for mineral and town-site lands shall be, after deducting the expenses incurred from time to time in connection with the allotment, appraisement, and sales, and surveys, herein provided, deposited in the Treasury of the United States to the credit of the Colville and confederated tribes of Indians, belonging and having tribal rights on the Colville Indian Reservation, in the State of Washington, and shall be expended for their benefit,

• • • • •

Sec. 6. That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations as to manner of sale, notice of same, and other matters incident to the carrying out of the provisions of this Act, and with authority to reappraise and reclassify said lands if deemed necessary from time to time, and to continue making sales of the same, in accordance with the provisions of this Act, until all of the lands shall have been disposed of.

Sec. 9. That the Secretary of the Interior is hereby vested with full power and authority to make all needful rules and regulations as to the manner of sale, notice of same, and other matters incident to the carrying out of the provisions of this Act, and with authority to reappraise and reclassify said lands if deemed necessary from time to time, and to continue making sales of the same, in accordance with the provisions of this Act, until all of the lands shall have been disposed of.

Sec. 7. That nothing in this Act contained shall be construed to bind the United States to find purchasers for any of said lands, it being the purpose of this Act merely to have the United States to act as trustee for said Indians in the disposition and sales of said lands and to expend or pay over to them the proceeds derived from the sales as herein provided.

• • • • •

1910 Amendment

... That the Act approved December twenty-first, nineteen hundred and four, entitled "An Act to authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation in the State of Washington," be, and the same is hereby, amended by adding thereto the following:

• • • • •

"Sec. 11. That the lands allotted, those retained or reserved, and the surplus lands sold or otherwise disposed of shall be subject for a period of twenty-five years to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country."

Sec. 9. That nothing in this Act contained shall be construed to bind the United States to find purchasers for any of said lands, it being the purpose of this Act merely to have the United States to act as trustee for said Indians in the disposition and sales of said lands and to expend or pay over to them the net proceeds derived from the sales as herein provided.

• • • • •

1916 Amendment

... That section seven of the Act of March twenty-second, nineteen hundred and six (Thirty-fourth Statutes at Large, page eighty), entitled "An Act to authorize the sale and disposition of surplus unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes," be, and the same is hereby, amended ... and that one section, numbered thirteen, as hereinafter provided, be, and the same hereby is, added to the said Act.

• • • • •

"Sec. 13. That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-

site purposes, or granted to the State or otherwise disposed of, shall be subject to the laws of the United States prohibiting the introduction of intoxicants into the Indian country until otherwise provided by Congress."